

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 June 23, 2020

17 10:06 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JUSTIN WALKER

1 HEARING re Notice of Agenda for June 23, 2020 Hearing

2  
3 HEARING re Amended Motion of Debtors for Authority to Enter  
4 into a Motion for Funding Agreement (related document(s)  
5 1005) filed by Marshall Scott Huebner on behalf of Purdue  
6 Pharma L.P. (ECF # 1249)

7  
8 HEARING re Notice of Hearing on Application of Stikeman  
9 Elliott LLP as an Ordinary Course Professional for  
10 Compensation for Services Rendered in Excess of the Tier I  
11 OCP Cap for the Period from September 15, 2019 through  
12 November 30, 2019 [Telephonic]  
13 (related document(s) 126, 548)

14  
15 HEARING re Application of the Official Committee of  
16 Unsecured Creditors for Entry of an Order Authorizing  
17 Retention and Employment of Bedell Cristin Jersey  
18 Partnership as Special Foreign Counsel, Nunc Pro Tunc to  
19 February 27, 2020 filed by Ira S. Dizengoff on behalf of The  
20 Official Committee of Unsecured Creditors of Purdue Pharma  
21 L.P., et al. (ECF #1244)

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23  
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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.  
3 We're here on In re Purdue Pharma, L.P., et al. This is a  
4 completely telephonic hearing, so I will ask you to identify  
5 yourself and your client the first time you speak. I may do  
6 so thereafter if I think the court reporter might not be  
7 able to put together your voice with your name.

8 There's one authorized recording of this hearing  
9 or this set of hearings. It's taken by Court Solutions.  
10 Court Solutions provides it to out clerk's office on a daily  
11 basis. If you want a transcript, you should contact the  
12 clerk's office to arrange for one.

13 So, with that introduction, I have the amended  
14 agenda for today's hearing. And I'm happy to go down the  
15 amended agenda.

16 MR. HUEBNER: Sure. Good morning, Your Honor.  
17 For the record, it's Marshall Huebner of Davis Polk on  
18 behalf of the debtors. Can you hear me clearly?

19 THE COURT: Oh, yes, fine; thanks.

20 MR. HUEBNER: Okay; terrific. So this should be a  
21 very brief and hopefully positive and excellent hearing.  
22 I'm happy to report that we're starting to build a bit of a  
23 track record of uncontested hearings, which is obviously  
24 very good progress given that this is a case of great  
25 complexity and, obviously, many people for valid reasons

1 have very strong views on many topics.

2 The HRT motion as has been substantially amended  
3 by the debtors, as Your Honor's no doubt saw in the papers,  
4 is really about one thing, which is at this point we're  
5 seeking authority to pay \$6.5 million in additional  
6 incremental funding to a non-profit pharmaceutical company  
7 that as far as we understand, I don't think anybody  
8 disagrees, is kind of very much in first place on the  
9 progress chart of trying to get over-the-counter naloxone or  
10 generic over-the-counter Narcan, one of the most important  
11 and (indiscernible) commonly found opioid overdose reversal  
12 medications to market.

13 I'm pretty confident that every single person,  
14 entity, and government and practically every stakeholder in  
15 this case agrees in concept that having low cost over-the-  
16 counter naloxone could potentially be very, very important  
17 as a new tool in battling the opioid epidemic. As we lay  
18 out in our papers, obviously, OTC naloxone as opposed to  
19 prescription, expensive, branded Narcan has the ability to  
20 increase access very dramatically and, God willing, save  
21 ultimately thousands if not more lives.

22 We originally filed the motion back on April 7th.  
23 We twice adjourned it. As Your Honor knows, we worked very  
24 hard to build consensus wherever possible and avoid  
25 contested hearings. Those efforts bore fruit even though

1 HRT is now just about literally out of money and down to  
2 fumes. And we could not adjourn it a third time because  
3 they would have actually run out of money, and we told  
4 everybody that.

5 And the good news is that those efforts worked. I  
6 think as the UCC and others acknowledge, we provided an  
7 incredible amount of diligence to multiple parties on many  
8 topics: financial, historical, pharmacological, meetings,  
9 calls, spreadsheets, and data. We also made a variety of  
10 changes to the motion. As Your Honor no doubt saw on the  
11 papers, we were originally requesting 11.5 million given  
12 that for right now the most important thing is to get  
13 through the phase one trial and if the phase one trial  
14 succeeds, then hopefully wonderful things will happen and  
15 maybe lots of other people will be running in excitement to  
16 help fund HRT. And maybe we never even have to move to  
17 collect five million because someone else has picked up the  
18 slack. Obviously, if the phase one trial goes in a  
19 different direction, naloxone may dictate different  
20 outcomes.

21 But just like injectable Nalmafene, which we  
22 talked about a couple of hearings ago, and there's another  
23 potentially very promising initiative, they're keeping this  
24 moving along at a relatively low cost. And I would note --  
25 actually, it's (indiscernible) an hour ago that our most



1 recent reported unrestricted cash balance is \$1.409 billion,  
2 which means that this 6.5 million is under one-half of one  
3 percent of the debtors' cash. And it's not that every  
4 dollar isn't precious because it is, but the question is,  
5 you know, is this reasonable in the context of the overall  
6 situation.

7 And so, with genuine thanks and appreciation to  
8 many people because some people two months were ready to go  
9 to war over this motion, some people were pretty sure they  
10 were objecting, some people were moderately sure they were  
11 objecting, and I think we listened hard. We made a variety  
12 of changes. As Your Honor knows, not only did we cut the  
13 relief basically in half, there are, you know, reporting  
14 obligations we were happy to agree to because we want the  
15 Court to see and be alongside us and either agree that this  
16 continuously should develop and is exciting or potentially  
17 not. There's certainly nothing to sort of, you know, not be  
18 information-sharing -- in information-sharing mode about  
19 with respect to the key stakeholders.

20 While I don't think there's any realistic chance,  
21 legal or practical, that a non-profit could ever convert to  
22 a for-profit company, HRT was instantly and easily happy to  
23 agree that if that kind of unthinkable eventuality somehow  
24 happened, I actually thing it's probably illegal under state  
25 law and I've never heard of such a thing. But, you know,

1 it's easier to say, sure, we'll put that in than to say  
2 that's just totally unneeded. So we put in other provisions  
3 that do things like require that they pay back all the money  
4 and give us the royalties and all that kind of stuff in case  
5 the unthinkable happens and they somehow become for-profit.  
6 And, again, the whole vision of this company from inception  
7 was to be a non-profit specifically for these purposes.

8 The Committee filed a pleading and, in part,  
9 because Your Honor is a careful reader. Your Honor has read  
10 a variety of those things in the pleading. I'm going to  
11 touch it very lightly. You know, candidly, there is a lot  
12 in there with which we don't quite agree. There's some  
13 things which we really don't agree. But given that it's not  
14 an objection and the goal is to get through this hearing as  
15 happily and consensually as possible, I'm just going to tap  
16 very lightly five points. I could have picked two, I could  
17 have picked ten. But I just do want the record to be clear  
18 for the Court's benefit since some of these things may  
19 return later in the case where, you know, we don't quite see  
20 it the same way.

21 We obviously decided not to file a reply because I  
22 felt that would have been silly overkill and not a good use  
23 of estate money. We're all trying to preserve as best we  
24 can. So I'm just going to tap them for two minutes and then  
25 sort of end where I began on this point.

1           One, the statement that OTC and naloxone cannot  
2 possibly result in any direct monetary benefit to any  
3 creditor in this case and that this is merely a charitable  
4 donation, the short answer is we just don't agree with that.  
5 And I don't really thing we need to go into why. Over time,  
6 you know, OTC and naloxone being developed could actually  
7 benefit many creditors in this case, including current  
8 creditors, including directly and economically. But, again,  
9 it's not up for today, so I just want to note that we see  
10 the world a little bit differently.

11           Two, just I do want to note that I'm going to say  
12 it for like the fifth time, we said either two or three  
13 times in the motion and many times to people on the phone,  
14 this is not a referendum on the form of a plan of  
15 reorganization. And this is not a vote, and nobody is  
16 silent or support of the motion or lack of objection or  
17 filing a statement or not filing a statement should be taken  
18 as their consent or support or passion in any direction  
19 about what the post-emergence company should be doing with  
20 respect to public health initiatives. I think we made that  
21 screamingly clear in the amended motion to give everybody  
22 comfort on that point.

23           To be clear, the debtors continue to believe very  
24 strongly and are advocating that the post-emergence company  
25 should continue and be engaged in doing good and saving

1 lives and leveraging its assets in potentially very unique  
2 ways that others could not. But today is not that day. The  
3 relief, it's very clear and extraordinarily limited, which  
4 is \$6.5 million to one non-profit entity.

5 Three, there is a repeated statement in the UCC  
6 filing that sort of no creditors support the PHI or no  
7 credit groups support the PHI. I don't want to get into  
8 that today. Again, it's just not to the issue. I don't  
9 actually think that statement is quite right, and I at least  
10 certainly would not be comfortable myself representing what  
11 each and every creditor or credit group in this entire case  
12 feels or doesn't feel. But, again, it's just not up for  
13 today because, as we made clear and one of the main reasons  
14 we filed the amended motion in addition to highlighting all  
15 the concessions was to sort of say in writing again and  
16 again what we told people again and again which is that this  
17 motion is not in any way to be seen as viewing, soliciting,  
18 accepting, you know, or anything really with respect to the  
19 views of other parties than the debtors with respect to the  
20 PHI.

21 Four, the supposition, which I actually think is  
22 sort of in bold, maybe even bold and italics, that hundreds  
23 of millions of dollars of additional money from Purdue will  
24 be needed to bring this product to market, I don't think  
25 that's right either. That's one possibility, which is if

1 Purdue or Reorganized Purdue -- which certainly will be  
2 named something else, I would imagine -- the reorganized  
3 debtors were to fund the entire thing and provide X doses  
4 for free for Y years, you know, and shoulder every single  
5 cost, that certainly could totally hundreds of millions of  
6 dollars. I'm sure there are sort of spreadsheets that say  
7 that. But there are many possibilities here.

8 And like with injectable Nalmafene, the goal is to  
9 be nimble and flexible and, frankly, many of those decisions  
10 will be in the hands of the reorganized company whose  
11 decisors will be people appointed by the creditors. So  
12 whether they want to sort of do it at cost and sell it at  
13 cost and recoup the initial development cost and it doesn't  
14 cost anything more or relatively minimal costs, whether they  
15 want to sort of have funded the initial cost and then have  
16 it be self-sufficient going forward, whether ultimately  
17 there are distributor settlements in the opioid larger  
18 situation and distributors distribute it for free or help in  
19 other ways, those are all chapters that are left to be  
20 written and many of those chapters will be written, frankly,  
21 after the emergence date when others are presumably in  
22 control of these entities.

23 But, again, it's important that the Court and  
24 everyone understand that this is not a foot in the door to a  
25 commitment by or on behalf of the debtors that is hundreds

1 of millions. It may not even be tens of millions. It may  
2 not even be millions, depending on sort of which way it  
3 goes.

4 The last topic I just want -- I guess I'll touch  
5 on the lightest because, actually, either late last night or  
6 this morning, the Ad Hoc Committee did file its own  
7 statement on this point, so I'm going to go a little bit  
8 lighter, which is the UCC statement sort of thinks out loud  
9 about some of its views on public versus private creditors  
10 and what each one wants and what each one may logically  
11 agree to take it to distribution, and all that stuff.

12 My only point is I just don't really think that's  
13 up for today, and I don't think it's helpful for me to sort  
14 of muse back, in part, because there are great many people  
15 in this case with a great many views and I have yet to find  
16 anyone who is not comfortable articulating their own views  
17 when they believe it is necessary and, in part, because I  
18 just don't think I should be sort of trying to describe what  
19 other people's views are, what they may or may not do under  
20 a plan.

21 But let me end where I started, which is I think a  
22 very important and appropriate focus on the positive. Many  
23 people came together to think hard about this "economically  
24 rather modest but for one reason or another important to  
25 them" motion in a constructive way over an extended period.

1 They asked a lot of questions. They got many answers. Many  
2 of them moved off of positions that they felt strongly  
3 about. Many members of the UCC, many people who are on the  
4 states and other governmental side, many people who felt  
5 passionately about the ERF and, like us, are incredibly  
6 frustrated that the larger initiatives with, you know, price  
7 tags, you know, many, many, many multiples of 6.5 million  
8 are not already underway and an initiative that while it has  
9 the potential, as many of the papers lay out, to be truly  
10 material, is still a couple of year away when we're not  
11 doing things that could have impact starting tomorrow. And  
12 that's a source of frustration to people.

13 But all those people, because there's not a single  
14 objector out of all the thousands of stakeholders in this  
15 case, has decided to object. And so we are grateful for  
16 that. We actually hope that it continues to be a harbinger  
17 of sort of green chutes and increased productive engagement  
18 among many parties who have strong views on many topics.

19 And with respect to the product itself, you know,  
20 I think we all share the view that, you know, we all hope  
21 that phase one is a redounding success and that this product  
22 takes a leap forward, not just a step forward, in bringing  
23 over-the-counter easily-available very-low-cost naloxone out  
24 to the world, to America but also the rest of the world.  
25 You know, the FDA, as the Court saw in the pleadings, has

1 done something I was told they've never done before ever for  
2 any product, which is they actually did the label themselves  
3 so that that could clear a hurdle and wouldn't have to sort  
4 of joust with them and get approval. The AMA obviously  
5 thinks this is a very important product, as well, with  
6 incredible life-saving potential, and we are delighted to  
7 bring the uncontested motion to the Court.

8 So let me stop there unless the Court has any  
9 questions. It may be that, you know, a couple of other  
10 people want to say a few words. I guess I'd also move the  
11 declaration of Jon Lowne or the amended declaration of Jon  
12 Lowne into evidence so we have the appropriate evidentiary  
13 support for the motion formerly sort of accepted into the  
14 record, although obviously no one is cross-examining him.  
15 There are no objections, but I think just as a matter of  
16 housekeeping, that's probably appropriate to do. And that  
17 completes my remarks on the first item on the agenda.

18 THE COURT: Okay. Thank you. Does anyone want to  
19 question Mr. Lowne on his amended declaration?

20 (No audible response)

21 THE COURT: All right. I have reviewed it, and I  
22 will accept it as his direct testimony.

23 (Declaration of Jon Lowne received in evidence)

24 THE COURT: Does anyone else have anything to say  
25 on the motion?



1 MR. TROOP: Your Honor, this is Andrew Troop.  
2 Just very briefly, and I -- and the non-consenting states do  
3 not object to the motion. Last night the Ad Hoc Committee  
4 filed a statement and, in light of that, I do feel I need to  
5 say something very quickly. As I said, the non-consent  
6 states do not object to the motion. We haven't -- we don't  
7 affirmatively support it either. And there may be some more  
8 discovery that needs to be taken before this path is done  
9 further and all those rights are reserved. We appreciate  
10 the changes that the debtors made to the motion to make it  
11 clear that this is not a referendum on public health  
12 initiatives or use in the future.

13 And, in that regard, I just wanted to underscore  
14 that the non-consenting states agree with the Ad Hoc  
15 Committee's statements in its filing that are consistent  
16 with the amended motion. The motion's not a referendum.  
17 Public entities' claims include all claims defined in the  
18 Bankruptcy Code, past, present, and future claims. And  
19 that, you know, from our perspective, we're not sure the UCC  
20 was saying anything different, but having joined the issue  
21 by the AHC, we just thought it made sense to make it clear  
22 on the record where the non-consenting states stand.

23 THE COURT: Okay.

24 MR. TROOP: That's all I have to say, Your Honor.  
25 Thank you.

1 THE COURT: Okay.

2 MR. PREIS: Your Honor, this is Arik Preis from  
3 Akin Gump Strauss Hauer & Feld on behalf of the Committee.  
4 Can I just say probably less than one minute?

5 THE COURT: Sure.

6 MR. PREIS: Just as Mr. Huebner pointed out, this  
7 is an uncontested motion. We are -- we don't think we need  
8 to say anything more than what was in our papers. I would  
9 just say two things. One, Mr. Huebner pointed out a few  
10 points earlier. I don't think it's necessary for us to  
11 respond. Our papers said what they said. Two, as Mr. Troop  
12 just pointed out, I don't think we said what the consenting  
13 group seems to imply that we said in our papers. But,  
14 again, that's not in front of you today, Your Honor, so I --  
15 with that, there's nothing further from us on this matter.

16 THE COURT: Okay. Anyone else?

17 (No audible response)

18 THE COURT: All right. I have before me an  
19 unopposed motion for authorization of the debtors' entry  
20 into an amended funding agreement to fund the next two  
21 stages or tranches in the development process of either  
22 easily-obtained or non-prescription naloxone/Narcon by a  
23 not-for-profit entity, HRT. The total funding is -- that is  
24 sought to be approved here is 6.5 million. It's part of a  
25 process that the debtors began pre-petition as part of their

1 own not-for-profit efforts to develop and facilitate the  
2 development of ways to control or prevent either the abuse  
3 or the consequences of taking opioids.

4 It appears to me that in the context of this case,  
5 as articulated in the motion, the continued funding of this  
6 project is warranted and it's a proper exercise of the  
7 debtor's judgment. The failure to fund the project, in my  
8 view, would result in its likely ending. At a minimum, it  
9 would result in a substantial suspension of the project.  
10 But, as a practical matter, it would appear to me that the  
11 chance of the project proceeding to a result would be  
12 unlikely.

13 So, therefore, in light of that and the due  
14 diligence that has been done on the project to confirm that  
15 at least as of today, this isn't an investment based on  
16 misguided focus on costs but on a belief that the project  
17 will in fact bear fruit or at least a reasonable belief that  
18 that's the case. This appears to me to be appropriate use  
19 of the debtors' funds.

20 So the debtors can email the order granting the  
21 amended motion and approving the amended funding agreement  
22 to chambers.

23 I did read the other pleadings that were submitted  
24 in connection with this, and it's clear to me that a  
25 substantial amount of time, effort, and money was spent in

1 connection with analyzing this project. As I've said before  
2 in many cases, including this one, the bankruptcy judge sees  
3 only about five percent of the case. I don't know and I  
4 don't need to know all the work that goes on behind the  
5 scenes in connection with motions.

6 I also don't want to seem to be a scold, but it  
7 appears to me that, notwithstanding the large value of these  
8 debtors well over a billion dollars, there remains a common-  
9 sense principle in all bankruptcy cases where, as is the  
10 case here, it would appear to me that the debtors are  
11 insolvent. Mainly, people should do only the due diligence  
12 that's necessary and approach these matters with a fair  
13 measure of common sense. I think, ultimately, that happened  
14 here, but given the amount that's being spent, I would hate  
15 to think that the cost of analyzing this was even one-tenth  
16 of that amount. And I trust that it was far less than that.

17 I would also note that I hope that the parties are  
18 coming to the end of their mediation process as regards to  
19 the overall occasion among public claimants on one side and  
20 private claimants on the other. I don't want to step on  
21 them, but I also want to reiterate what I said last time  
22 this needs to move forward promptly.

23 And I would urge the parties to recognize that  
24 there is not a bright line distinction between abatement and  
25 satisfying claims. In many, perhaps, most cases, people --

1 individuals who have been injured by the debtor's product  
2 and would have a claim as a result of it would benefit by  
3 abatement in one form or another. So my hope is that  
4 parties focus on proper due diligence as to reasonable  
5 parameters for a program that contemplates abatement, taking  
6 into account the interest of individual creditors and their  
7 rights but recognizing that many, if not most of them, would  
8 benefit from programs that treat and help resolve opioid  
9 addiction and that provide resources to various groups to  
10 facilitate that.

11 Again, I don't know where you are in your  
12 mediation. I don't want to hear where you are today. But I  
13 want to make it clear again that, ultimately, there's a  
14 tradeoff between having the best possible plan that parties  
15 can imagine and getting it done so the money can get out to  
16 people promptly. I agreed reluctantly to defer the roughly  
17 \$200-million emergency program in the hope that that would  
18 happen promptly, that effort of getting a plan done. It  
19 just needs to get done.

20 So, again, Mr. Huebner, you could submit the order  
21 on this motion which obviously, as everyone has said, stands  
22 on its own and is not to be taken as any sort of adoption of  
23 any other expenditure of the debtors' funds.

24 MR. HUEBNER: Thank you, Your Honor. We will do  
25 so. I would be, by the way, genuinely remiss, although it's

1 rare I do something like this if I actually did not call out  
2 my colleague Christopher Robertson, who I'm about to turn  
3 over the podium for the second matter. I mean he really did  
4 work almost night and day for months with many stakeholder  
5 groups who had, you know, as you said, the Court sees five  
6 percent where we (indiscernible) 95 percent. And I think  
7 that his stewardship candidly was mission-critical to this  
8 motion getting to where it got today, which is uncontested  
9 and ready for entry.

10 So with thanks to Mr. Robertson, let me also turn  
11 over the podium to Mr. Robertson. I also did want to note  
12 that the UCC when we're done with the formal agenda has I  
13 think an item or two that they would like to bring up with  
14 the Court, and I had told our -- I told Mr. Price last night  
15 I would mention that. I realized I had forgot to do it, so  
16 that's coming when our three quick agenda items dictates.  
17 So, for now, let me turn the podium over -- the virtual  
18 podium to Mr. Robertson.

19 THE COURT: Okay.

20 MR. ROBERTSON: Thank you, Marshall, and thank  
21 you, Your Honor. Your Honor, Christopher Robertson, Davis  
22 Polk & Wardwell, on behalf of the debtors. Can you hear me  
23 clearly?

24 THE COURT: Yes; thanks.

25 MR. ROBERTSON: Thank you.

1           The next item on the agenda is the application of  
2       Stikeman Elliott, debtors' Canadian counsel, for fees in  
3       excess of the Tier 1 OCP cap for the period from September  
4       15th through November 30th. Your Honor, very briefly, the  
5       OCP order provides that if the Tier 1 OCPs exceed \$150,000  
6       per month on average over a rolling three-month period, that  
7       OCP must file a fee application and seek court approval for  
8       the excess amount. Thus far in the case, this is the only  
9       such excess fee application. And Stikeman's fees for the  
10      three-month period ending November 30th exceeded this cap by  
11      an aggregate amount of \$38,999. The fee examiner appointed  
12      in these cases has reviewed Stikeman's application and filed  
13      his final report yesterday evening at Docket Number 1292. A

14           As stated in the final report, Stikeman and the  
15      fee examiner have agreed to a recommended reduction of \$754  
16      of fees. And Stikeman is, therefore, requesting allowance  
17      of compensation in excess of the Tier 1 OCP cap of \$38,245  
18      for the applicable period. And there were no other  
19      objections and, as such, this application is unopposed.

20           I would note, Your Honor, that the fee examiner,  
21      David Clouter (phonetic), is on the phone and available to  
22      address any questions. Otherwise, on behalf of Stikeman, we  
23      would ask that Your Honor approve the application subject to  
24      the recommended reduction in the amount of \$38,245. We have  
25      prepared a form of order to submit to chambers if Your Honor

1 so decides.

2 THE COURT: Okay. I will grant the application in  
3 the revised amount. Let me also note that I do not expect  
4 any further filings by the fee examiner unless it's an  
5 objection. If I have to amend the order to do that, I'll do  
6 it after my earlier remarks about due diligence, costs, and  
7 the like. I don't want any more filings on fee applications  
8 unless there's an objection by the examiner.

9 MR. ROBERTSON: Thank you, Your Honor.

10 THE COURT: And I think the parties understand  
11 why. These are publications. I'm not a big fan of fee  
12 examiners, as a concept. I agreed to one here because it's  
13 a public case. But, again, people have to use common sense.

14 MR. HUEBNER: And, Your Honor, with that, before  
15 the turn the podium over to Akin for the third matter, to  
16 the fee examiner's great credit, they actually deserve a  
17 shout-out of their own because they have actually gone  
18 through every single interim application from the first  
19 period, at least to the ones with (indiscernible), caught a  
20 bunch of stuff and asked for a reasonable thoughts on  
21 appropriate changes. And I think they have actually worked  
22 out the entire first four-and-a-half-month period with  
23 virtually everybody consensually and quickly. And we hope  
24 to submit a revised -- an order as early as later today.

25 So I do want to give the Court comfort that that



1 actually is proceeding with extraordinary speed and  
2 efficiency, and there will be I think all in several hundred  
3 thousand dollars of reductions because they did catch a  
4 bunch of stuff that people agreed to. And so, you know,  
5 although it's very strange I guess for a debtors' primary  
6 counsel to thank or praise the fee examiner who frankly, you  
7 know, nobody sort of throws a party when they get one  
8 imposed on them or they agree to one. It's actually gone  
9 quite efficiently and well so far. So I did want to give --

10 THE COURT: Okay. Well, that's good to hear.  
11 And, again, I had the holdback in the first interim  
12 application because I did want the fee examiner to look at  
13 them. And I'm glad that that's happened promptly and  
14 resulted in a consensual order. And that's all I need. I  
15 don't need a further report. I trust the examiner's doing  
16 his job and if I get a disagreement, then I'll need  
17 something. But, otherwise, I won't. So I'm grateful that  
18 that's happened as you reported it, Mr. Huebner.

19 MR. HUEBNER: Perfect. Okay. (Indiscernible) is  
20 going very well.

21 So now let me turn the podium over, I believe, to  
22 Ms.

23 For item number three which is the retention of  
24 Jersey counsel by the UCC.

25 THE COURT: All right.

1 MS. BRAUNER: Good morning, Your Honor. Sara  
2 Brauner --

3 THE COURT: This is the bailiwick of Jersey, not  
4 New Jersey.

5 MR. HUEBNER: That is correct.

6 MS. BRAUNER: That is correct, Your Honor.

7 THE COURT: Okay.

8 MR. HUEBNER: This is old -- well, I guess the  
9 original Jersey was in England, so this is intermediate  
10 Jersey. It's neither old nor new.

11 THE COURT: Right. Across the Atlantic Jersey.

12 MS. BRAUNER: Good morning, Your Honor. For the  
13 record, Sara Brauner, Akin Gump, on behalf of the Official  
14 Committee. As Your Honor saw, on June 9th the Committed  
15 filed an application to retain Bedell Cristin Jersey  
16 Partnership, not New Jersey, at ECF Number 1244 as special  
17 foreign counsel to analyze certain issues related to Jersey  
18 law, including, among other things, the location and  
19 recoverability of certain assets held by members of the  
20 Sackler family in trust created under the laws of Jersey.

21 As Your Honor certainly saw, no objections were  
22 received in respect of the application. In advance of  
23 filing the application, the Committee's advisors discussed  
24 Bedell's retention with the debtors, and the debtors  
25 indicated that they would not be objecting. The Committee

1 also shared the application with the U.S. Trustee in advance  
2 of filing and made minor modifications to address certain  
3 questions the U.S. Trustee raised.

4 Edward Drummond, the proposed lead partner on the  
5 matter and declarant in respect to the application is on the  
6 line to the extent Your Honor has questions about his  
7 declaration or otherwise. Absent any questions, we  
8 respectfully request that you approve the application in its  
9 current form. Thank you, Your Honor.

10 THE COURT: Okay. I don't have any questions. I  
11 noticed that the firm listed its rate in dollars. Is that  
12 something the firm normally does with U.S. clients?

13 MS. BRAUNER: I would defer to Mr. Drummond, but  
14 we asked that the firm do so with respect to this matter,  
15 and they were happy to oblige.

16 THE COURT: Okay. All right. Based on the  
17 (indiscernible) in the application, including the  
18 declaration in support, I'll grant the application. So you  
19 can email the order as modified to reflect the comments from  
20 the U.S. Trustee to chambers.

21 MS. BRAUNER: We will, Your Honor. Thank you.

22 THE COURT: Okay; thanks.

23 MR. PREIS: Your Honor, this is Arik Preis from  
24 Akin Gump Strauss Hauer & Feld on behalf of the Creditor's  
25 Committee. That ends the formal part of the agenda. But

1 we, as Mr. Huebner noted, we have two items that we wanted  
2 to address this morning in the way of updates to Your Honor  
3 regarding items that were placed on the docket just to keep  
4 you apprised of developments in the case. I don't think  
5 it's going to take more than five minutes.

6 May I proceed?

7 THE COURT: Sure.

8 MR. PREIS: Okay. The first topic, last night we  
9 filed an amended Rule 2019 statement on the docket. As we  
10 noted in that filing, we've officially added a third public  
11 side ex-officio member to the Official Committee, which is  
12 Thornton Township High School District 205 in Illinois,  
13 which is a representative public-school district of the  
14 group that the parties in the case have been colloquially  
15 referring to as the public-school districts.

16 That group consists of school districts in  
17 Florida, Kentucky, Illinois, and New Mexico and is seeking  
18 to represent a class of approximately 13,000 public school  
19 districts nationwide. The public-school districts assert  
20 claims for damages against the debtors, including the  
21 increased cost of public school, special education, and  
22 supplementary services to children with disabilities due to  
23 prenatal opioid exposure.

24 The public-school districts assert that their  
25 claims are distinct from those of the other public side

1 creditors. Just as a reminder to you, the public-school  
2 districts filed two pleadings in this case over the past  
3 three months. First, in early April, they filed a motion to  
4 participate in mediation on behalf of the public-school  
5 districts. That was ECF Number 998 and 1038. Shortly  
6 thereafter, they -- and the parties in interest in the  
7 mediation agreed to a stipulation resolving that motion.  
8 That was ECF Number 1073 pursuant to which they are now  
9 involved in the mediation.

10 Second, in early June, they filed a motion seeking  
11 the right to file a class proof of claim. That's ECF Number  
12 1211, which as you know, they voluntarily adjourned to the  
13 July omnibus hearing. We are very pleased to add another  
14 public side voice to the Creditors Committee, and we just  
15 wanted to make you aware of that.

16 THE COURT: Okay.

17 MR. PREIS: The second major topic we would like  
18 to address this morning is an update on our investigation of  
19 the settlement framework and, specifically, developments  
20 regarding discovery. To that, I'm going to cede the podium  
21 to my partner, Mitch Hurley, who will speak just on a few  
22 things.

23 MR. HURLEY: Thank you, Your Honor. It's Mitch  
24 Hurley. Can you hear me?

25 THE COURT: Yes; good morning.

1 MR. HURLEY: Good morning. So, again, Mitch  
2 Hurley with Akin Gump on behalf of the Official Committee of  
3 Unsecured Creditors.

4 Your Honor, I wanted to provide a very brief  
5 update on discovery in the cases, and I think there is some  
6 good news to report on that front. First, on June 5th, 2020  
7 at Docket Number 1231, the Official Committee filed with the  
8 Court an agreed-upon stipulation among various creditor  
9 groups in the case, including the non-consenting state group  
10 and numerous private-side creditor groups. The stipulation  
11 would provide the Official Committee with the ability to  
12 share with its signatories privileged work product and  
13 analysis of the Committee and its counsel and professionals.  
14 And in exchange and subject to the terms and the stipulation  
15 itself, of course, those groups would agree not to seek  
16 reimbursement from the estates for undertaking certain kinds  
17 of activities.

18 I understand from my bankruptcy colleagues that  
19 this stipulation is at least quite unusual in the exchange  
20 of consideration, if you will, that it represents between  
21 the creditor groups. And we think it will be very valuable.  
22 It followed weeks of negotiation. We think it's going to  
23 streamline discovery in the case and save very substantial  
24 estate resources.

25 I also want to note I think it will really enhance

1 the quality of the ongoing investigation of the claims as  
2 it's going to allow an even deeper coordination between the  
3 Official Committee's professionals and -- professionals for  
4 the many public and private groups who are involved these  
5 cases and who have, in some cases, years of experience in  
6 facility with the claims arising out of the opioid crisis  
7 and other matters of great importance to the cases. So we  
8 think that coordination will be valuable in terms of  
9 enhancing the quality in investigation and further  
10 streamlining the investigation.

11 The stipulation requires a modification to the  
12 protective order in order for it to work. The way the  
13 protective order reads now, it forbids a receiving party  
14 from sharing protected material with other receiving  
15 parties, which obviously would be a problem if the Committee  
16 is going to be sharing its work product and analysis with  
17 signatories to the stipulation.

18 We have been negotiating with representatives of  
19 the Sacklers a modification to the protective order in an  
20 effort to get that change done without requiring court  
21 intervention. And we're hopeful that we're going to get  
22 there. We aren't there quite yet, but we're hopeful that we  
23 will get there. If we don't, of course, we'll have to come  
24 back to Your Honor. But we're doing our best to avoid that  
25 so that the protective order can be amended on consent.

1           And then, finally, the ad hoc group of consenting  
2       states is not a signatory in the stipulation, as I'm sure  
3       Your Honor noticed. The ad hoc group, of course, can speak  
4       for itself if they like but, in general, they have asked to  
5       negotiate a side agreement with the Committee, the potential  
6       terms of which are still under discussion. But it's our  
7       hope that we will also soon reach an agreement with the ad  
8       hoc group that would allow us to share official Committee  
9       work product and analysis with them and their professionals  
10      under terms that, as noted, are still being negotiated.

11           We're going to work hard towards that goal because  
12      we think that would also be very effective in help  
13      streamlining the process going forward. Unless Your Honor  
14      has any questions about the stipulation, I want to turn to a  
15      very brief update about where we are in our discovery  
16      disputes with the Sacklers.

17           THE COURT: No, I don't have any questions. I do  
18      have a comment, which is that I'm glad that you've proceeded  
19      with this. Obviously, people gave some thought to the  
20      general concern that had led me to add the reporting and  
21      analysis aspect to the discovery orders that I signed. So,  
22      as you know, I'm all for streamlining that process given the  
23      number of parties involved here. So I'm pleased that the  
24      parties on the creditors' side have done that.

25           MR. HURLEY: Excellent. Thank you, Your Honor.



1           So I will turn now to the update on where we are  
2     in the discovery disputes with the Sacklers and the  
3     Sacklers' affiliates and wholly-owned companies, including  
4     the IACs. Again, there's some good news. The parties have  
5     agreed on certain matters related to discovery as embodied  
6     in the three stipulations that we filed last night. The  
7     stipulations are between the Official Committee and the  
8     Mortimer side of the Sackler family, sometimes referred to  
9     as Side A and a stipulation between the Committee and the  
10    Raymond or Side B Sacklers and a third stipulation between  
11    the Committee and the IAC entities that are owned jointly by  
12    Side A and Side B and that are referred to by the defined  
13    term "stipulating entities" or "stipulating IACs" in the  
14    stipulation.

15           First, I want to thank the Court for helping to  
16    break what was an existing log jam. As Your Honor knows,  
17    the Committee submitted a letter to the Court on June 2nd  
18    and on June 5th received -- the Court received I think six  
19    different responses from different law firms representing  
20    the Sacklers and their various affiliates. On June 8th,  
21    Your Honor, instructed the parties to renew their meet-and-  
22    confer efforts, and we believe that instruction coupled with  
23    the comments the Court made on the record during the June  
24    3rd hearing really helped propel the parties to an  
25    agreement.

1           Certainly before filing its letter, the Official  
2           Committee had engaged in numerous meet and confers with the  
3           stipulating parties and their counsel. And, at least from  
4           our perspective, the meet and confers that followed the  
5           submission of the letters and Your Honor's comments and  
6           instructions were vastly more productive than the ones that  
7           preceded those events and have led now to agreements with  
8           the Sacklers that we believe represent very substantial  
9           progress in terms of creating a schedule for rolling  
10          disclosures and privilege logs by Side A and Side B of the  
11          Sackler family to be substantially completed in the next few  
12          months.

13                 I want to make a quick side note here with respect  
14          to a person named Beth Cohen (phonetic). Ms. Cohen is,  
15          within the definitions provided in the case stipulation, is  
16          a Side B additional-covered Sackler party. But Ms. Cohen is  
17          not represented by Milbank. She is represented by the  
18          Schulte Law Firm. We believe that the Official Committee  
19          will soon have agreement with Ms. Cohen on terms that are  
20          substantially similar to those agreed to between the  
21          Official Committee and Side B. And we hope to provide that  
22          stipulation to the Court promptly. We just aren't there  
23          yet, but we think that is very soon to occur.

24                 I want to turn now to the IACs. As the Court is  
25          aware, they have new counsel and the IACs are farther behind

1 in discovery than some of the other parties. So regarding  
2 scheduling, the IAC stipulation really describes more of an  
3 agreement to agree on a schedule but with a near-term  
4 deadline for reaching that agreement or having one imposed  
5 by Your Honor, if that becomes necessary, which we of course  
6 hope it will not.

7 I also want to note that as the stipulations in  
8 some case expressly contemplate, the Official Committee s  
9 soon will move for authorization to serve some additional  
10 subpoenas. That's including with respect to the IACs,  
11 potentially other entities jointly owned by our affiliate or  
12 with the Sacklers as well as Stewart Baker, the Sackler's  
13 long-time outside counsel who also had hundreds of executive  
14 titles at Purdue and the IACs.

15 Regarding the IACs, we have made clear to them and  
16 their counsel that the Official Committee really feels that  
17 it must proceed where possible and appropriate by formal  
18 subpoenas. This is in part because, frankly, the Official  
19 Committee tried to get discovery from the IACs informally  
20 before without success. And without on this call getting  
21 into the details the way our request for IAC discovery were  
22 handled, any information we were provided about who their  
23 counsel was and what that counsel is doing was deeply  
24 problematic and troubling.

25 And, again, I'm not going to get into the details

1 of that on this call. I don't raise it to point fingers and  
2 certainly not at you, counsel for the IACs, which is the  
3 Royer Cooper firm. That firm wasn't here and wasn't  
4 involved during January and February, March, and April when  
5 information was being provided to the Official Committee  
6 concerning the IAC's counsel that turned out, for whatever  
7 reason, not to be accurate.

8 I raise the point only to help explain why from  
9 the Official Committee's perspective it's practically  
10 inconceivable to us that we could proceed at this point with  
11 IAC discovery by anything but formal process because of  
12 everything that's happened. And that doesn't mean that our  
13 work with the IACs isn't going to wait for service of  
14 subpoenas. If Your Honor's had a chance to read it, of  
15 course, it was -- they were filed late last night, so  
16 certainly may not have yet. You'll see that the stipulation  
17 expressly provides that we and counsel for the IACs are  
18 going to start the meet-and-confer process very promptly.  
19 And we have, the Committee has been encouraged by the  
20 cooperative approach that Royer Cooper has taken, especially  
21 in working over the past couple of weeks towards a  
22 stipulation that was filed last night. And we hope, and we  
23 do expect, that that's going to continue, that that has been  
24 productive -- a productive relationship so far.

25 But as we told Royer Cooper from the beginning

1 really, we do still intend to seek those formal subpoenas  
2 and we will be looking for great expedition from the IACs  
3 given the circumstances that led us to where we are now.  
4 And I'm hopeful, and as I said, expect that we can continue  
5 to work productively towards that goal with Royer Cooper.

6 I'll also note that our agreement with the  
7 Sacklers calls for the production of privilege logs on a  
8 regular basis beginning on July 22nd and after other  
9 production deadlines that are contemplated under the  
10 stipulations. This is a very important aspect of the  
11 agreements from the Committee's perspective. As we  
12 anticipate, there may be substantial disagreement among the  
13 parties about the viability of privilege claims in the  
14 cases, including but not only because, as I alluded to  
15 before, certain of the Sacklers (indiscernible) has also  
16 held key executive positions at Purdue and the IACs. And  
17 since there may be many thorny issues to be resolved, we're  
18 very pleased that we now have agreement for production logs  
19 to be produced by both sides of the family on a regular  
20 basis going forward.

21 And, with that, Your Honor, that really covers the  
22 summary I think of where we are now with the Sackler  
23 discovery. I'd yield the phone, though I understand there  
24 may be other creditors' side representatives who may wish to  
25 speak briefly about discovery. And, of course, if Your

1 Honor has any questions for me, I'd be happy to answer them.

2 THE COURT: Okay. Well, before I hear from anyone  
3 else, I am pleased that -- by your report and by the fact  
4 that I haven't received any more discovery letters for about  
5 three weeks. I am not particularly troubled by the issuance  
6 of subpoenas. I mean Bankruptcy Rule 2004(c) specifically  
7 contemplates it. On the other hand, I am going to remind  
8 everyone, although I think the litigators here on all sides  
9 are familiar with the bankruptcy process, that this is  
10 bankruptcy discovery. It's not in the context of an  
11 adversary proceeding or contested matter. This is to  
12 perform due diligence. It's very important due diligence,  
13 but it's to perform due diligence.

14 So those who practice the bankruptcy area should  
15 know the difference. And, again the cost/benefit analysis  
16 is important, recognizing though, as I've said repeatedly  
17 that this is one area in this case where the creditors' side  
18 really does need to become comfortable with the facts in  
19 order to negotiate a plan that would involve the Sacklers.

20 MR. LEES: Your Honor, this is Alex Lee at  
21 Milbank. May I be heard briefly?

22 THE COURT: Sure. I was going to say I don't know  
23 if anyone else has anything more to say on this, but you're  
24 free to if you want to.

25 MR. LEES: Thank you, Your Honor. Alex Lees of

1 Milbank for the Raymond Sackler family. Mr. Hurley said  
2 quite a bit in his presentation, and I don't think it would  
3 be productive or useful to try to get into a tit-for-tat  
4 about everything.

5 But one particular comment that I did not want to  
6 leave hanging out there was his suggestion that somehow, we  
7 or our clients were not being cooperative in discovery until  
8 the Official Committee filed its letter a few weeks ago. We  
9 view that as not an accurate presentation of the facts. We  
10 believe that the meet-and-confer process was working and  
11 that we were being cooperative and offering compromises,  
12 albeit in the context of bona fide disputes which happened  
13 here. And we don't think that the letter served as a  
14 catalyst for any level of cooperation that wasn't already  
15 there. And I didn't want --

16 THE COURT: Okay.

17 MR. LEES: -- our silence on the issue to be taken  
18 as suggesting our acquiescence in the presentation of the  
19 facts. That's all, Your Honor.

20 THE COURT: That's fine. I'm not sure what the  
21 facts of discovery really matter anyway. The ultimate  
22 result is what counts, so -- but thank you.

23 MS. BALL: Your Honor, apologies; this is Jasmine  
24 Ball from Debevoise & Plimpton for the Mortimer side. I'm  
25 just going to echo what Mr. Lees just said just for the

1 record for purposes --

2 THE COURT: Okay. Thank you.

3 MS. BALL: Thank you.

4 MR. HUEBNER: Your Honor, this is Marshall Huebner  
5 for a minute from the debtors' perspective, I should note I  
6 think we are something like nine months and eight days into  
7 the case. I think that, you know, Your Honor actually made  
8 other comments before that I think relate to everything that  
9 we all are doing. You know, there is obviously a balance to  
10 be struck between a run rate that is now growing rather  
11 torrid on discovery issues with very, very legitimate needs  
12 of the creditor body ideally through efficient processes  
13 that many of us have authored and championed and co-authored  
14 to get it done the right way.

15 I should also note that I think that if anybody  
16 sort of had taken bets on the opening day of the case  
17 whether nine months later there would be note be a single  
18 discovery requesting having been filed against the debtors,  
19 I don't think anybody would have taken that side of the bet.  
20 And I do want to sort of give a shout out to many people for  
21 the fact that with respect to the debtors, the UCC and the  
22 debtors and many other parties have worked out I think  
23 almost literally all or virtually all sort of information  
24 requests. We're very close to I think agreement on the  
25 smaller many issues. Those are obviously largely handled by



1 others and really not very much at all by me, but it is a  
2 tremendous, tremendous work stream.

3 I see, you know, dozens of emails a week with this  
4 custodian and this and search terms and parameters and hits  
5 and de-duping and re-duping, and QC. And, again, the Court  
6 should know just for a glimmer since I don't give sort of  
7 full State of the Union reports to the Court, but when the  
8 topic does come up that there's just a massive amount of  
9 work that has gone on in good faith by many parties. And  
10 while there may be subpoenas and 2004 (indiscernible)  
11 Sacklers, I didn't want to leave it entirely unmentioned  
12 that there has been not one against Purdue and that's for  
13 very good reason, which is a tremendously cooperative and  
14 also intense and also expensive and the like process.

15 So I did want to just quickly note that. Your  
16 Honor, we have no other items before --

17 MR. TROOP: Actually, Mr. Huebner, before you wrap  
18 up, if I may?

19 MR. HUEBNER: Sure.

20 MR. TROOP: Thank you.

21 Your Honor, this is Andrew Troop and the non-  
22 consenting state group. I didn't think that Mr. Huebner was  
23 going to go where he did. But, again, in an effort of full  
24 transparency with the Court and with the parties, first off,  
25 we are fully committed to working to enhance the quality of

1 the investigation and be efficient with the UCC. And, in  
2 that regard, we have with the UCC engaged in substantial  
3 what I'm going to call non-compulsory discovery requests  
4 with the debtors.

5 And I am hopeful, like Mr. Huebner is hopeful,  
6 that with the couple of open issues that remain, those --  
7 with the debtors, those will be resolved soon this week.  
8 But as a heads up, I think that with the support of the  
9 Committee, the Creditor's Committee, if we can't resolve  
10 those issues this week, we may need to bring those remaining  
11 few meaningful categories of disagreement before you.

12 I am very hopeful that is not where we will end  
13 up, but the open requests are ones that really go to the  
14 heart of the issues that you've described as being on the  
15 creditors' plate for confirmation understanding. And we'll  
16 need to get to the bottom of that, as well, given everyone's  
17 effort I think to try to move this case as long as quickly  
18 as possible. We're probably getting to the point where we  
19 can't delay talking with you about the issue, the issues if  
20 we can't resolve them this week.

21 So just so that you know, Your Honor, that's out  
22 there.

23 THE COURT: Okay.

24 MR. TROOP: And --

25 THE COURT: I'm hopeful, too, that you won't need

1 to. But if you do, you know, you can schedule a call. But  
2 I'm hopeful you'll be able to work them out as you worked  
3 out the others ones with (indiscernible).

4 MR. TROOP: Yes, Your Honor. Thank you.

5 THE COURT: Okay. All right.

6 Mr. Huebner, I think you were about to say we're  
7 done?

8 MR. HUEBNER: Yeah. No, so we ended up 97 percent  
9 joy, 3 percent buzz stop, but I think we are now definitely  
10 done.

11 THE COURT: All right. Very well. I'm going to  
12 ring off then. There are no other matters on this morning's  
13 calendar, so thank you all.

14 COUNSEL: Thank you, Your Honor.

15 THE COURT: Bye bye.

16 (Whereupon these proceedings were concluded)  
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18  
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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: June 24, 2020